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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,665	07/10/2003	Louis Pericard	11578.897	9949

7590

06/22/2005

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85 Pondfield Road  
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EXAMINER
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HUYNH, KHOA D

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 06/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/616,665

Applicant(s)

PERICARD, LOUIS

Examiner

Khoa D. Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03/18/05 & 04/05/05.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 5-16 is/are pending in the application.
- 4a) Of the above claim(s) 5-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 13-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>03/18/05</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2 and 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Abplanalp (6394364).

Regarding claim 1, the Abplanalp reference discloses an aerosol container. The container includes an outer container (11) having an interior container space formed between the outer container (11) and an inner container or bag (13). The container also includes an aerosol valve (Fig. 3) having a valve stem (19 in Fig. 5), a valve stem gasket (46), a valve housing (see added notation in attached Fig. 5 at the end of this Detailed Action) and the bag (13) is mounted on said valve housing via the elements (57, 63). As schematically shown in Figure 3, the valve stem includes an intermediate portion having an exterior frusto-conical annular surface (about 50), and the valve housing includes an interior frusto-conical annular surface (Figure 4 schematically shown the contact of the frusto-conical annular surfaces when element 50 engages element 51). As schematically shown in Figure 4, the valve, when assembled, acts as a single integral member. Furthermore, as schematically shown in Figure 3, the respective frusto-conical annular surfaces are separated from one another when

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the valve is not actuated, and the frusto-conical annular surfaces are in annular sealing contact (Fig. 4) with each other when the stem is deeply depressed for propellant pressure filling. The valve housing (as schematically shown in attached Figure 5) is characterized by the absence of a propellant-filling orifice through the housing sidewall axially below the valve stem gasket.

Regarding claim 13, as schematically shown in attached Figure 5, the valve stem exterior frusto-conical annular surface engages the valve housing interior frusto-conical annular surface at a position substantially separated from the bottom of the valve stem.

Regarding claim 2, the Abplanalp reference discloses an aerosol container. The container includes an outer container (11) having an interior container space formed between the outer container (11) and an inner container or bag (13). The container also includes an aerosol valve (Fig. 1) having a valve stem (19 in Fig. 5), a valve housing (see added notation in attached Fig. 5 at the end of this Detailed Action), a gasket (46) mounted into the mounting cup (16), and the bag (13) is sealing attached to said valve housing via the elements (57, 63). As schematically shown in Figure 3, the gasket surrounds the valve stem and has a top surface abutting a bottom surface of the mounting cup when the valve is closed. The valve stem includes a central dispensing channel (42) and lateral orifices (49) extending through the valve stem side wall into the channel. The valve stem further includes a portion with an exterior annular surface (50),

and the valve housing also includes an interior annular surface (Figure 4 schematically shown the contact of the annular surfaces when element 50 engages element 51). The respective surfaces are in annular sealing contact (Fig. 4) with each other when the stem is deeply depressed for propellant pressure filling between the gasket top surface and the mounting cup bottom surface and around the outside of the gasket. The valve housing (as schematically shown in attached Figure 5) is characterized by the absence of a propellant-filling orifice through the housing sidewall axially below the valve stem gasket.

Regarding claim 14, s schematically shown in Figure 4, the valve, when assembled, acts as a single integral member. Furthermore, as schematically shown in Figure 3, the respective annular surfaces are separated from on another when the valve is not actuated and only engages each other during propellant pressure filling.

Regarding claim 15, as schematically shown in attached Figure 5, the valve stem exterior annular surface engages the valve housing interior annular surface at a position substantially separated from the bottom of the valve stem.

Regarding claim 16, the valve stem exterior annular surface and the valve housing interior annular surface are both frusto-conical.

3. Claims 2 and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Connor et al. (2003/0089739).

Regarding claim 2, the O'Connor et al. reference discloses an aerosol container. The container includes an outer container (111) having an interior container space formed between the outer container (111) and an inner container or bag (120). The container also includes an aerosol valve (Fig. 11) having a valve stem (124), a valve housing (portion 127,129), a gasket (136) mounted into the mounting cup (113), and the bag (120) is sealing attached to said valve housing. As schematically shown in Figures 7 and 11, the gasket surrounds the valve stem and has a top surface abutting a bottom surface of the mounting cup when the valve is closed. The valve stem includes a central dispensing channel (Fig. 11) and lateral orifices (125) extending through the valve stem side wall into the channel. The valve stem further includes a portion (the portion above elements 125 where element 130 is positioned) with an exterior annular surface, and the valve housing also includes an interior annular surface (the surface located above element 129 where element 130 comes into contact with). The respective surfaces are in annular sealing contact (Fig. 11) with each other when the stem is deeply depressed for propellant pressure filling between the gasket top surface and the mounting cup bottom surface and around the outside of the gasket. The valve housing (as schematically shown in Fig. 11) is characterized by the absence of a propellant-filling orifice through the housing sidewall axially below the valve stem gasket.

Regarding claim 14, s schematically shown in Figure 11, the valve, when assembled, acts as a single integral member. Furthermore, as schematically

shown in Figure 12, the respective annular surfaces are separated from one another when the valve is not actuated and only engages each other during propellant pressure filling (Fig. 11).

Regarding claim 15, as schematically shown in attached Figure 5, the valve stem exterior annular surface engages the valve housing interior annular surface at a position substantially separated from the bottom of the valve stem.

#### ***Response to Amendment***

4. Applicant's amendment, filed on 03/18/2005, to the pending claims is insufficient to distinguish the claimed invention from the cited prior art or overcome the rejections as discussed above.

#### ***Response to Arguments***

5. Applicant's arguments filed on 03/18/2005 with respect to the pending claims have been fully considered. However, they are deemed not persuasive.

Applicant asserts that the Flynn reference does not teach the amended limitations that are "the valve stem acts as a single integral member", "the surfaces are separate...when the valve is not actuated", "the valve housing is characterized by the absence of a propellant filling orifice through the housing side wall axially below the valve stem gasket" and "the valve stem including a central dispensing channel and lateral orifices". See Remarks section, pages 10-12.

Nevertheless, such assertions are now moot in view of the new grounds of rejections under 35 U.S.C. 102(b) as being anticipated by Abplanalp (6394364) and

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under 35 U.S.C. 102(b) as being anticipated by O'Connor et al. (2003/0089739) as discussed supra.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Muller and Hyland et al. were cited to show an aerosol valve having a valve stem, that, when depressed, allows propellant pressure filling between the gasket top surface and the mounting cup bottom surface and around the outside of the gasket.

7. Applicant's amendment necessitated the new grounds of rejections presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khoa D. Huynh  
Primary Examiner  
Art Unit 3751

HK  
06/18/2005